IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2019 OF 2005

Shri.Jayantilal M.Patadia
and Ors. ..Petitioners

Vs.

New Chandraoday Co-Op.
Hsg. Socy.Ltd. and Ors. ..Respondents

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Mr.A.Y.Sakhare, senior counsel i/b M/s.Tamhane & Co. for Petitioners
Mr.Prashant Naik for Repsondent Nos.1 and 2
Mr.C.J.Sawant with Mr.Vijay Patil for Respondent no.3.
Mr. A.H.Palekar, AGP for Respondent no.5

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CORAM : B.H.MARLAPALLE,J.

DATE : MAY 4,2005

P.C.:

1. Heard Mr.A.Y.Sakhare, the learned senior counsel for the Petitioner, Mr.Prashant Naik, the learned counsel for the respondent nos.1 and 2 and Mr.C.J.Sawant, the learned senior counsel for the respondent no.3. Respondent no.4 is not a necessary party and hence, respondent no.4 be deleted forthwith. Mr.A.H.Palekar, learned, AGP appears for respondent no.5.

2. In Case No. CC/V/746 of 2004 the present

petitioners are the disputants and they have filed an application for injunction pending the main dispute. However, their prayers for ad-interim injunction have been rejected by an order dated 31.12.2004. Being dissatisfied, they approached the Maharashtra State Co-Operative Appellate Court in Appeal from Order No.13 of 2005 and the said appeal also has been dismissed on 7.3.2005.

3. It is therefore, evident that the injunction application is still pending for final disposal and in the meanwhile, the construction of Building-C is already in progress. Hence, the said injunction application does not survive so far as the construction of Building-C is concerned. This position is also admitted by the Petitioners.

4. Mr.C.J.Sawant, the learned senior counsel on taking instructions from Respondent no.3 states that the construction of Buildings A and B would not be commenced unless the injunction application pending before the Co-Operative Court No.V at Mumbai is decided. The Petitioners are satisfied by this undertaking and undoubtedly, it would be in the interest of both the parties that the injunction application is decided within a fixed period.

5. Hence, it is directed that the Co-Operative Court

No.V at Mumbai shall hear and decide the pending injunction application in respect of A and B buildings as expeditiously as possible and in any case, by 31.7.2005 on its on merits and without being influenced by any observations made in the orders impugned in this petition and the Respondent no.3 shall not commence the construction of A and B buildings till 31.7.2005 and the said Respondent is free to proceed with the construction of 'C' building which is in progress as at present.

6. The Writ Petition is disposed of in the above terms.

[B.H.MARLAPALLE,J.]